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*Attorneys for Plaintiff and all others similarly situated*

**THE UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

LYNNE HOLLEY, on behalf of  
herself and all others similarly  
situated,

Plaintiff,

vs.

MAC PROS SALES AND  
INSTALLATION, INC. dba  
MACPRO, INC., and DOES 1  
through 20, inclusive, and each of  
them,

Defendants.

Case No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
OF:**

- (1) Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*
- (2) Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*

**DEMAND FOR JURY TRIAL**

Plaintiff Lynne Holley (“Plaintiff”), on behalf of herself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action for herself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of defendant Mac Pros Sales and Installation dba

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MacPro, Inc. and DOES 1 through 20, in negligently knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA"), thereby invading Plaintiff's privacy.

### **JURISDICTION & VENUE**

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business at 12300 Washington Blvd., Suite R, Whittier, California 90606. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. §§ 1391(b) and 144(a) because Defendant does business within the State of California and the County of Los Angeles.

### **PARTIES**

4. Plaintiff, Lynne Holley ("Plaintiff"), is a natural person residing in Lake Forrest, California.

5. Defendant Mac Pros Sales and Installation dba MacPro, Inc. ("Defendant" or "MacPro") is a California corporation with its principal place of business at 12300 Washington Blvd., Suite R, Whittier, California 90606. Plaintiff is informed and believes that MacPro conducted and conducts business in Los Angeles County. The registered agent for service of process is David Machado, 8600 Beach Blvd., Unit 201, Buena Park, California 90620.

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6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 20, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes and thereon alleges that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was the owner, agent, servant, joint venturer and employee, each of the other and each was acting within the course and scope of its ownership, agency, service, joint venture and employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes and thereon alleges that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

8. At all times mentioned herein, each and every Defendant was the successor of the other and each assumes the responsibility for each other’s acts and omissions.

### **FACTUAL ALLEGATIONS**

9. Beginning on or around the afternoon of May 5, 2015, Defendant contacted Plaintiff on her cellular telephone at (949) 842-\*\*\*\*, in an attempt to communicate with Plaintiff regarding search engine optimization services. The original calls came from what is believed to be an internet generated spoof number starting with the area code prefix (562). Defendant is known to use the number (562) 273-3688.

10. Defendant used an “automated telephone dialing system,” as

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1 defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to  
 2 communicate with Plaintiff regarding services from “MacPro, Inc.”

3 11. Defendant’s call(s) constituted calls that were not for emergency  
 4 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

5 12. Defendant’s call(s) were placed to telephone numbers assigned to a  
 6 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
 7 pursuant to 47 U.S.C. § 227(b)(1).

8 13. Defendant never received Plaintiff’s “prior express consent” to  
 9 receive calls using an automated dialing system or an artificial or prerecorded  
 10 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

### 11 **CLASS ALLEGATIONS**

12 14. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules  
 13 of Civil Procedure and/or other applicable law, on behalf of herself and all others  
 14 similarly situated, as a member of the proposed class (hereafter "the Class")  
 15 defined as follows:

16 All persons within the United States who received any  
 17 telephone calls from Defendant to said person’s cellular  
 18 telephone made through the use of any automatic telephone  
 19 dialing system or an artificial or prerecorded voice and such  
 20 person had not previously provided express consent to  
 21 receiving such calls within the four years prior to the filing of  
 22 this Complaint

23 15. Plaintiff represents, and is a member of the Class, consisting of All  
 24 persons within the United States who received any telephone call from  
 25 Defendant to said person’s cellular telephone made through the use of any  
 26 automatic telephone dialing system or an artificial or prerecorded voice and such  
 27 person had not previously not provided their cellular telephone number to  
 28 Defendant within the four years prior to the filing of this Complaint.

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1           16. Excluded from the Class are governmental entities, Defendants, any  
2 entity in which Defendants have a controlling interest, and Defendants' officers,  
3 directors, affiliates, legal representatives, employees, co-conspirators, successors,  
4 subsidiaries, and assigns. Also excluded from the Class are any judges, justices  
5 or judicial officers presiding over this matter and the members of their immediate  
6 families and judicial staff.

7           17. This action is properly maintainable as a class action. This action  
8 satisfies the numerosity, typicality, adequacy, predominance and superiority  
9 requirements for a class action.

10           18. **Numerosity:** The proposed Class is so numerous that individual  
11 joinder of all members is impracticable. Due to the nature of the trade and  
12 commerce involved, Plaintiff does not know the number of members in the  
13 Class, but believes the Class members number in the thousands, if not more.  
14 Plaintiff alleges that the Class may be ascertained by the records maintained by  
15 Defendants.

16           19. Plaintiff and members of the Class were harmed by the acts of  
17 Defendant(s) in at least the following ways: Defendant(s) illegally contacted  
18 Plaintiff and Class members via their cellular telephones thereby causing  
19 Plaintiff and Class members, without their "prior express consent," to incur  
20 certain charges or reduced telephone time for which Plaintiff and Class members  
21 had previously paid by having to retrieve or administer message(s) left by  
22 Defendant during those illegal calls, and invading the privacy of said Plaintiff  
23 and Class members.

24           20. **Common Questions of Law and Fact Predominate:** There are  
25 only a few legal and factual issues to determine if there is liability under the  
26 TCPA and for each of those questions of law and fact, common issues to the  
27 Class predominate over any questions that may affect individual Class members,  
28 in that the claims of all Class members for each of the claims herein can be

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1 established with common proof. Common questions of fact and law include, but  
 2 are not limited to, the following:

- 3 (a) Whether, within the four years prior to the filing of this  
 4 Complaint, Defendant(s) made any calls (other than a call made  
 5 for emergency purposes or made with the prior express consent  
 6 of the called party) to a Class member using any automated  
 7 dialing system or an artificial or prerecorded voice to any  
 8 telephone number assigned to a cellular telephone service;  
 9 (b) Whether Plaintiff and the Class members were damaged thereby,  
 10 and the extent of the statutory damages for each such violation;  
 11 and  
 12 (c) Whether the Defendant(s) should be enjoined from engaging in  
 13 such conduct in the future.

14 21. **Typicality:** Plaintiff's claims are typical of the claims of members  
 15 of the Class, as Plaintiff was subject to the same common course of conduct by  
 16 Defendant(s) as all Class members. The injuries to each member of the Class  
 17 were caused directly by Defendant(s)' wrongful conduct as alleged herein.

18 22. **Adequacy of Representation:** Plaintiff will fairly and adequately  
 19 represent and protect the interests of the Class. Plaintiff has retained counsel  
 20 with substantial experience in handling complex class action litigation. Plaintiff  
 21 and her counsel are committed to prosecuting this action vigorously on behalf of  
 22 the Class and have financial resources to do so.

23 23. **Superiority of Class Action:** A class action is superior to other  
 24 available methods for the fair and efficient adjudication of the present  
 25 controversy. Class members have little interest in individually controlling the  
 26 prosecution of separate actions because the individual damage claims of each  
 27 Class member are not substantial enough to warrant individual filings. In sum,  
 28 for many, if not most, Class members, a class action is the only feasible

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1 mechanism that will allow them an opportunity for legal redress and justice.  
 2 Plaintiff is unaware of any litigation concerning the present controversy already  
 3 commenced by members of the Class. The conduct of this action as a class  
 4 action in this forum, with respect to some or all of the issues presented herein,  
 5 presents fewer management difficulties, conserves the resources of the parties  
 6 and of the court system, and protects the rights of each Class member.

7 24. Moreover, individualized litigation would also present the potential  
 8 for varying, inconsistent, or incompatible standards of conduct for Defendants,  
 9 and would magnify the delay and expense to all parties and to the court system  
 10 resulting from multiple trials of the same factual issues. The adjudication of  
 11 individual Class members' claims would also, as a practical matter, be  
 12 dispositive of the interests of other members not parties to the adjudication, and  
 13 could substantially impair or impede the ability of other Class members to  
 14 protect their interests.

15 25. Plaintiff and the members of the Class have suffered and will  
 16 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful  
 17 conduct. Defendant(s) have acted, or refused to act, in respects generally  
 18 applicable to the Class, thereby making appropriate final and injunctive relief  
 19 with regard to the members of the Class as a whole.

## 20 **FIRST CAUSE OF ACTION**

21 **(VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**

22 **47 U.S.C. *ET SEQ.*)**

23 **(Against All Defendants)**

24 26. Plaintiff hereby incorporates by reference and re-alleges each and  
 25 every allegation set forth in each and every preceding paragraph of this  
 26 Complaint, as though fully set forth herein.

27 27. The foregoing acts and omission of Defendants constitute numerous  
 28 and multiple violations of the TCPA, including but not limited to each and every



1 one of the above cited provisions of 47 U.S.C. § 227, *et seq.*

2 28. As a result of Defendants violations of 47 U.S.C. § 227, *et seq.*,  
3 Plaintiff and the Class Members are entitled to an award of \$500.00 in statutory  
4 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

5 29. Plaintiff and the Class members are also entitled to and seek  
6 injunctive relief prohibiting such conduct in the future.

## 7 **SECOND CAUSE OF ACTION**

8 (KNOWING AND/OR WILLFUL VIOLATION OF

9 THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. *ET SEQ.*)

10 (Against All Defendants)

11 30. Plaintiff hereby incorporates by reference and re-alleges each and  
12 every allegation set forth in each and every preceding paragraph of this  
13 Complaint, as though fully set forth herein.

14 31. The foregoing acts and omissions of Defendants constitute  
15 numerous and multiple knowing and/or willful violations of the TCPA, including  
16 but not limited to each and every one of the above cited provisions of 47 U.S.C.  
17 § 227, *et seq.*

18 32. As a result of Defendant(s)' violations of 47 U.S.C. § 227, *et seq.*,  
19 Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory  
20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and  
21 47 U.S.C. § 227(b)(3)(C).

22 33. Plaintiff and the Class members are also entitled to and seek  
23 injunctive relief prohibiting such conduct in the future.

## 24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for  
26 relief and judgment as follows:

27 1. An order certifying this action as a class action and appointing  
28 Plaintiff and his counsel to represent the Class;

CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

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2. For the first cause of action:

- Plaintiff and Class members are entitled to and request \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227, *et seq.*;
- Preliminary and permanent injunctive relief enjoining Defendant(s), their agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unlawful calls made with automated dialing systems to cellular phones without prior express consent;
- Attorneys' fees, costs and any and all other relief that the Court deems just and proper.

3. For the second cause of action:

- Plaintiff and Class members are entitled to and request \$1,500.00 in statutory damages, for each and every violation , pursuant to 47 U.S.C. § 227, *et seq.*;
- Preliminary and permanent injunctive relief enjoining Defendant(s), their agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unlawful calls made with automated dialing systems to cellular phones without prior express consent;

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- Attorneys' fees, costs and any and all other relief that the Court deems just and proper.

Dated: October 6, 2015

Respectfully submitted,

By: /s/ John P. Kristensen

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Respectfully submitted,

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